

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
(San Francisco, Alameda and San Mateo Counties, California)

PROFESSIONAL TECHNICAL SECURITY SERVICE, INC.

Employer

and

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE
PROFESSIONALS OF AMERICA (SPFPA)

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 24/7,
INTERNATIONAL UNION OF SECURITY OFFICERS,

Limited Intervenor

20-RC-17822

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 1/
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 3/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 4/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 5/

All full-time and regular part-time security officers, control officers, relief sergeants and relief lieutenants employed by the Employer in San Francisco, San Mateo and Alameda Counties; excluding security officers working at the Embarcadero Center in San Francisco who are represented by SEIU Local 1877, all other employees, all non-guard employees, office employees and supervisors as defined in the Act.

DIRECTION OF ELECTION 6/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are

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employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA).

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before **February 13, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by February 20, 2003.

Dated: February 6, 2003

at San Francisco, California

/s/ Robert H. Miller
Regional Director, Region 20

- 1/ I find that the Hearing Officer did not commit prejudicial error in granting the motion of the Service Employees International Union Local 24/7 International Union of Security Officers (the Limited Intervenor) to intervene on a limited basis to present evidence and argument but not to appear on the ballot.

It is undisputed that the Limited Intervenor is a labor organization that admits non-guard employees to membership and, under Section 9(b)(3) of the Act, cannot be certified by the Board as the exclusive collective-bargaining representative of a guard unit. However, the Limited Intervenor was party to a collective-bargaining agreement with the Employer covering its guard employees, including those petitioned-for herein, that expired on December 20, 2002. As the Limited Intervenor asserted that it could present evidence concerning the scope of the unit, the collective-bargaining history and the area bargaining patterns relevant to a determination of whether the petitioned-for unit is an appropriate unit, I find that the Hearing Officer properly granted intervenor status to Service Employees International Union Local 24/7 International Union of Security Officers for the limited purpose of providing such evidence.

I note that the Petitioner attempted to both amend its petition to conform to the scope of the unit covered under the Agreement between the Employer and the Limited Intervenor and at the same time to preserve its right to argue that a single location unit is an appropriate unit. Petitioner cannot have it both ways as to what unit it seeks. It has chosen to amend its petition and the unit herein reflects that amendment.

I further note that the Limited Intervenor is requesting a further hearing, asserting that additional evidence should be adduced regarding the amended unit. The unit, as amended, is the unit which Limited Intervenor has consistently contended should be found appropriate herein. The Employer has taken no position on the unit. Therefore, its appropriateness is uncontested by the parties. As addressed below, I find that the record is sufficient to establish that the petitioned-for unit is an appropriate unit. Accordingly, there is no need to remand the hearing to take further evidence.

The Limited Intervenor also contends that in light of the Petitioner's amendment of the unit, Limited Intervenor should be allowed to appear in "some fashion on a ballot merely to avoid confusion for the employees" This request is denied as the Limited Intervenor is admittedly a union that admits non-guards to membership and, under Section 9(b)(3) of the Act, cannot be certified as the collective-bargaining representative of a unit of guards.

- 2/ The parties stipulated, and I find, that the Employer is a Delaware corporation with its main place of business located in San Francisco, California, where it is engaged in providing security services to commercial property management companies. The parties further stipulated, and I find, that on an

annual basis, the Employer provides services valued in excess of \$50,000, to Cushman & Wakefield and Prentiss Properties respectively, and that both Cushman & Wakefield and Prentiss Properties meet the Board's standards for the assertion of jurisdiction on a direct basis. Based on the parties' stipulation to such facts, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this matter.

- 3/ The parties stipulated, and I find, that the Petitioner and the Limited Intervenor are each a labor organization within the meaning of the Act.
- 4/ No party contends that there is a contract bar to this proceeding.
- 5/ By its amended petition, the Petitioner seeks to represent a unit comprised of all security officers, control officers, relief sergeants and relief lieutenants employed by the Employer in San Mateo, San Francisco and Alameda Counties; excluding all other employees, all non-guard employees, office employees and supervisors as defined in the Act. The Petitioner initially sought to represent a unit comprised of only two security officers employed by the Employer who were working at a single location at 814 Mission Street, San Francisco, California.

The Employer took no position as to the appropriateness of the unit and the Limited Intervenor contended that the petitioned-for unit was not appropriate and that the appropriate unit was the unit covered under its most recent contract with the Employer, which was the unit that Petitioner amended its petition to cover towards the end of the hearing.

The record contains a copy of a collective-bargaining agreement (herein called the Agreement), between the Employer and the Limited Intervenor, and three agreements extending that Agreement through December 20, 2002. The Agreement covered the unit described above in the Petitioner's amended petition.

At the time of the hearing, the Employer employed about 315 to 320 security officers in Alameda County and San Francisco County in the unit covered by its collective-bargaining agreement with the Limited Intervenor. It employs no security officers in San Mateo County at this time.

The Employer also has a collective-bargaining agreement with a different local union, SEIU Local 1877, covering security officers at the Embarcadero Center located in San Francisco.

The Employer's Main Offices. The Employer has an office in San Francisco and one in Oakland, California, which is in Alameda County. The Employer's co-owners, human resources staff, two account managers, field supervisors

and sales personnel have offices in the San Francisco facility. Personnel files for all of the Employer's jobsites are kept in the human resources department at the Employer's San Francisco facility. About six persons work in the Oakland office. These include, among others, one account manager and human resources and sales personnel.

Geographic Location of Worksites. The Employer's security officers work at about 38 sites or locations in San Francisco and 18 sites in Alameda County. Most of the Employer's contracts are with property management companies and most involve only a single location. The Employer has about 30 to 32 such contracts in San Francisco. The record is silent regarding the number of contracts in Alameda County. Most of the Employer's facilities in San Francisco are in the financial district and about sixty percent of them are within a one-square mile area. The furthest distance between facilities is about 18 miles. On average, there are about six security officers at each location.

Management & Supervision. Personnel functions, including hiring and firing, are centralized. Disciplinary and termination decisions are handled by the account managers, and in some cases, by both the account manager and an owner. There are three account managers in San Francisco and one in Oakland. The account managers visit jobsites on a periodic basis. Decisions regarding vacation leave, time off requests, and who will substitute for an absent employee are made by the scheduler/dispatcher and account manager.

The Employer also has an undisclosed number of field supervisors who visit the jobsites on a regular basis to provide support to the guards and the clients. The field supervisors have no authority to terminate employees. They do, however, have the authority to remove a security officer from his post and send him home as long as they can cover his or her shift. As the record is insufficient to determine whether the field supervisors are statutory supervisors, they will be allowed to vote subject to challenge.

Some of the jobsite locations have a site supervisor. The record does not disclose the number of site supervisors or the nature of their job duties or working conditions, other than that they possess no authority to terminate or suspend employees and they perform basic security officer duties. As the record is insufficient to determine whether the site supervisors are statutory supervisors, they will be permitted to vote subject to challenge.

Qualifications, Job Skills, Orientation, Training and Duties. Security officers are oriented at the Employer's main office and they undergo training both at the main office and at the individual job sites. Most of the security officers employed by the Employer have high school degrees. Less than five percent have college degrees. Some of the longer term security officers have

received additional training with the Employer. The job duties of the security officers at all locations are basically the same.

Interchange. The Employer's practice is to train most of its security officers to work at two or more locations. The Employer's scheduler/dispatcher and account manager decide who will substitute for a security officer who is absent due to illness, vacation or for some other reason. The record is silent regarding the level of interchange among security officers at the various locations other than that security officers are specifically trained to fill in for guards at other locations. Further, some security officers apparently regularly split their work hours between two locations.

Wages and Fringe Benefits. The fringe benefits of security officers are the same from location to location as set forth under the Agreement. If a security officer transfers to another location, he or she retains the same benefits and seniority rating. The Agreement provides for a minimum level of wage rates for security officers. Some locations pay more and some pay less depending upon what the client is willing to pay in its contract with the Employer.

Uniforms. The Employer uses four different types of uniforms. However, the record is silent regarding the significance of the various uniforms, who wears them and the locations at which they are worn.

Bargaining History. As noted above, the Employer and the Limited Intervenor were parties to a collective-bargaining agreement covering the employees in the petitioned-for unit, as amended. This Agreement was originally made between the Employer and the International Union of Security Officers (IUSO) which affiliated with the SEIU in March, 2002, and became the Limited Intervenor. The Agreement was effective for the period October 31, 2001 to May 31, 2002, and was extended by agreement of the parties until December 20, 2002. The record does not disclose whether there were any collective-bargaining agreements between the International Union of Security Officers and the Employer prior to this Agreement.

Area Bargaining Practices. The record includes several collective-bargaining agreements between the Limited Intervenor and other employers in the San Francisco Bay Area showing that the practice in the area is to have multi-location units of security officers.

Analysis. The Board evaluates the following factors in determining whether a petitioned-for multi-facility unit is an appropriate unit: employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history. *Bashes, Inc.*, 337 NLRB No. 113 (June 26, 2002); *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *NLRB v. Carson Cable TV*, 795 F.2d 879, 884 (9th Cir. 1986). Application of

these factors to the facts presented in this case shows that the petitioned-for unit, as amended, is an appropriate unit. Thus, the employees at all locations covered under the Agreement have basically the same skills and duties. The terms and conditions of employment for all employees that have been covered under the Agreement are basically the same except that some locations may have wage rates higher than those set forth in the Agreement based on what a client is willing to pay under its contract with the Employer.

The record reflects that all of jobsites where employees in the petitioned-for unit work are located within a few miles of each other, with the maximum distance apart being about 18 miles. With respect to employee interchange, although the record contains no figures or percentages in this regard, it does show that the Employer's practice is to train each guard to be able to work at two or more facilities so that he or she can substitute for guards at other locations. Further, some security officers apparently regularly split their work hours between two locations.

The record also shows that the management and supervision is centralized with the Employer's account managers and owners, and with regard to scheduling matters, also with the Employer's scheduler.

The bargaining history between the Employer and the Limited Intervenor supports a finding that the petitioned-for unit is an appropriate unit as it is the unit that is covered under the Agreement. Finally, the record shows that generally there has been a pattern of multi-location units in the security industry in the San Francisco Bay Area.

Based on the foregoing factors, I find that the petitioned-for multi facility-unit is an appropriate unit under the Act. Accordingly, I am directing an election in the petitioned-for unit modified to exclude the Employer's security officers working at the Embarcadero Center in San Francisco who are represented by another union, SEIU Local 1877.

- 6/ As the unit found appropriate is larger than that requested, the Petitioner will be accorded a period of 10 days from the date of the Direction of Election in which to submit the requisite showing of interest to support an election. In the event the Petitioner does not wish to proceed with an election, it may withdraw its petition without prejudice by notice to the undersigned within 7 days from the date of this decision. See *ACL Corporation d/b/a Atlanta Hilton and Towers*, 275 NLRB 1413 (1985).

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